IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.486 OF 2003

Smt.Sindhu Dhanaji Jagdale & others. ... Petitioners.

vs.

Mr.Shantilal Saremali Mallesha & another. ... Respondents.

Mr.S.S.Kulkarni i/b. Mukesh Subramaniam, for Petitioners.

Mr.D.H.Mehta i/b. G.S.Bhatt, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 11th April,2005

P.C.:-

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act,1996. The Award which is made by the sole Arbitrator is really an Award which shocks the judicial conscious. Admittedly, the property was purchased in the name of Dhanaji and Vimal and merely because some declaration was issued by Mr.Dhanaji that he purchased the property in the name of his wife due to love and affection and she did not pay any consideration, Mr.Dhanaji is held to be the sole owner of the property. Though it was a specific case that

the signature on the agreement is not that of Dhanaji, no attempt was made to produce any evidence to prove that the agreement was in fact signed by Mr.Dhanaji. As the signature of the deceased was denied, the only course of action for the learned Arbitrator, was to require the parties to lead oral and documentary evidence to prove the signature of Mr.Dhanaji. Admittedly, no oral evidence has been led. As Mr.Dhanaji was not the sole owner of the property, he could not have transferred the entire property. Smt.Vimal had left behind her, a Son and a daughter and therefore, unless they join in executing the agreement, there could not be a decree for specific performance of the agreement to transfer the entire property. As observed above, the Award made by the learned Arbitrator shocks the judicial conscious and is liable to be set aside and it is accordingly set aside.

The Respondent no.1 is directed to pay costs of this petition as incurred by the Petitioners.